

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY NASSAU IMMEDIATE

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FOLLOWING REPEAT COMDT COGARD WASHDC R 172043Z JUL 75
SENT ACTION CCGDSEVEN MIAMI FL INFO SECSTATE, NMFS WASHDC

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TAGS: EFIS, BF

SUBJECT: SPINY LOBSTER NEGOTIATIONS

QUOTE

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G-O TO D

SPINY LOBSTER NEGOTIATIONS

A. COMDT (G-000-4) LTR OF 23 MAR 75 TO CCGDSEVEN (O)

1. WHILE REF A STATED THAT BOTH HEADQUARTERS AND SEVENTH DISTRICT REPRESENTATION WOULD BE DESIRABLE AT ANY SPINY LOBSTER NEGOTIATION WITH BAHAMAS, WE WOULD NOW LIKE TO RELY PRIMARILY ON SEVENTH DISTRICT FOR CG REPRESENTATION.

2. CG REPRESENTATIVE(S) MAY BE REQUIRED TO EXERCISE CONSIDERABLE INITIATIVE AS NEGOTIATIONS PROCEED. GENERAL CG GUIDELINES SHOULD BE OF VALUE. YOUR COMMENTS ON FOLLOWING GUIDELINES AND RELATED POSITIONS ARE INVITED ALONG WITH SUGGESTIONS OF OTHER AREAS WHICH MUST BE EXPLORED.

3. TERM "CONTINENTAL SHELF" IS USED IN FOLLOWING PARAGRAPHS AS IT IS DEFINED IN 1958 CONVENTION ON THE CONTINENTAL SHELF AND 16 U.S.C. 1085. IT DOES NOT INCLUDE BOTTOM WITHIN TERRITORIAL SEA.

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4. IN CERTAIN CASES BAHAMIAN AUTHORITIES HAVE TAKEN

ENFORCEMENT ACTION WHERE THERE WAS SOME REASON TO BELIEVE THAT THE ACTION INTERFERED WITH NAVIGATION TO DEGREE BEYOND THAT CONSIDERED APPROPRIATE UNDER INTERNATIONAL LAW. U.S. FISHERMEN HAVE BEEN PROSECUTED WHEN THERE WAS REASON TO BELIEVE THAT THEY DID NOTHING MORE THAN ENTER CONTIGUOUS FISHERIES ZONE OF BAHAMAS WHILE IN POSSESSION OF SPINY LOBSTERS. IT IS POSSIBLE THAT BAHAMIAN ENFORCEMENT ACTION WITH REGARD TO ITS CONTINENTAL SHELF FISHERY RESOURCE (CSFR) LAW MAY GO BEYOND THAT WHICH WOULD BE EXERCISED BY THE UNITED STATES. IT IS ALSO POSSIBLE THAT FORCE MAY BE USED BY BAHAMIAN AUTHORITIES MORE FREELY THAN BY CG. HOWEVER, CG IS ASSUMING AT THIS TIME THAT BAHAMIAN ENFORCEMENT OF ITS CSFR LAW WILL BE ALONG SAME LINES AS CG/NMFS ENFORCEMENT OF U.S. CSFR LAW. IF THAT DOES NOT PROVE TO BE THE CASE, SOME VIEWS EXPRESSED BELOW WILL CHANGE.

5. IF THERE IS A TREATY WITH IMPLEMENTING LEGISLATION, CG WILL, OF COURSE, ENFORCE IN REQUIRED MANNER. IF ADDITIONAL FUNDS ARE MADE AVAILABLE TO CG FOR SPECIFIC PURPOSE, THEY WILL BE SPENT FOR THAT PURPOSE.

6. THERE ARE LIKELY TO BE DIFFICULTIES FROM THE U.S. FISHING INDUSTRY IF ANY CG ACTIVITY MAY BE INTERPRETED AS ENFORCING FOREIGN LAW AGAINST U.S. FISHERMEN WHILE ENFORCEMENT OF U.S. LAW AGAINST FOREIGN FISHERMEN REMAINS LESS THAN FULLY EFFECTIVE. ANY PROPOSAL THAT U.S. ASSUME ANY RESPONSIBILITY FOR DIRECTLY OR INDIRECTLY ENFTRCING OAHAMIAN LAW SHOULD BE MADE ONLY AFTER VERY CAREFUL CONSIDERATION, AND IT SHOULD BE AS LIMITED AS POSSIBLE.

7. IN ANY CASE, FULLY EFFECTIVE ENFORCEMENT SHOULD NOT NECESSARILY BE ANTICIPATED. THE COST WOULD BE PROHIBITIVE. THIS PARTICULAR AREA OF ENFORCEMENT WILL HAVE TO COMPETE WITH OTHER CG MISSIONS FOR AVAILABLE RESOURCES. WHILE WE ARE FULLY SYMPATHETIC TO FACT THAT NEGOTIATIONS ARE DESIGNED TO PROTECT CHOSEN MEANS OF U.S. RESIDENTS TO EARN A LIVING, WE CANNOT IGNORE FACT THAT SPINY LOBSTER FISHING INDUSTRY PRODUCES AN ITEM WHICH CANNOT BE CONSIDERED A RELATIVELY IMPORTANT SOURCE OF PROTEIN. RECENT NMFS ESTIMATES PUT SIZE OF U.S. INDUSTRY ON THE BAHAMIAN CONTINENTAL SHELF AT ABOUT 600 FISHERMEN USING ABOUT 200 VESELS TO CATCH ABOUT \$5,000,000 WORTH OF LOBSTER (EXVESSEL VALUE). THERE ARE UNCLASSIFIED

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IN EFFECT STRINGENT FEDERAL BUDGETARY LIMITATIONS, AND ANY LICENSING SCHEME ON NARROW BASE DESCRIBED ABOVE SHOULD NOT BE EXPECTED TO GENERATE LARGE AMOUNTS OF ENFORCEMENT FUNDS. THE MOST ENFORCEMENT THAT SHOULD BE EXPECTED AT SEA WOULD BE OCCASIONAL PRESENCE OF CG MEDIUM ENDURANCE CUTTER (MEC) (COST ABOUT \$7,20) PER DAY) AND/OR CG 95 FOOT PATROL BOAT (COST ABOUT \$1,890 PER DAY). MEC WOULD CARRY HELICOPTER WHENEVER POSSIBLE (ADDITIONAL COST ABOUT \$494 PER FLIGHT

hour), and there would be occasional flights by CG fixed wing aircraft (cost about \$800 per flight hour).

8. Enforcement against U.S. vessels operating out of U.S. ports is most economically undertaken in U.S. ports.

9. Indirect CG/NMFS enforcement of the Bahamian spiny lobster law would be based for the present on 18 U.S.C. 43. Specific legislation would be desirable, and it will be essential to any U.S. enforcement related directly to the Bahamian spiny lobster law if 18 U.S.C. 43 proves to be unworkable.

10. CG officer can search any U.S. vessel at sea without warrant anywhere outside of foreign territorial waters under authority of 14 U.S.C. 89. Arrest could be made without warrant under same authority if it appeared that violation of 18 U.S.C. 43 was knowing and willful. Spiny lobsters found on board could be seized without warrant under same authority, and vessel could be seized without warrant under same authority if spiny lobster liable to forfeiture were found on board. Persons and items under arrest or seizure would be taken to U.S. port. Ultimate disposition would depend upon NMFS, U.S. Attorney, and Federal Courts.

11. Title 18 U.S.C. 113, 1111, and 1112 provide for criminal prosecution of cases of assault, murder, or manslaughter aboard U.S. vessels over the Bahamian continental shelf. In cases of aggravated assault, murder or manslaughter in violation of Bahamian law, persons found within U.S. may be extradited to the Bahamas under existing extradition treaty.

12. In absence of specific legislation requiring it, CG would not turn arrested persons or seized property over to Bahamian authorities.

13. If Bahamian authorities observed a violation of U.S. law over Bahamian continental shelf, U.S. prosecution or administrative penalty proceeding could be undertaken without unclassified

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CG or NMFS confirmation of observation. CG will not use cutters or aircraft to simply confirm such observations or to return violators to U.S. if there is continuing danger to persons or property, CG will respond as appropriate.

14. CG has authority to board, search, and seize foreign fishing vessels over U.S. continental shelf, within U.S. territorial waters, and, in cases where the foreign vessel must be pursued, anywhere else at sea outside of foreign territorial waters in order to enforce U.S. CSFR law. Bahamian law enforcement officers have same reach, e.g. Bahamian enforcement vessel could pursue U.S. fishing vessel to outer limit of U.S. territorial sea and seize it.

15. CG/NMFS effort to enforce U.S. law prohibiting foreign taking of CSFR from U.S. continental shelf has been remarkable to this point for absence of force, retaliation, casualties,

AND FOREIGN INTERFERENCE. PROMOTING CONTINUATIONS OF THAT
RECORD IS A PRIMARY INTEREST OF CG IN BAHAMIAN SPINY LOBSTER
SITUATION. FOR THAT REASON, WE WILL NOT INTERFERE WITH BAHAMIAN
ENFORCEMENT EFFORTS. A PATTERN OF VIOLATION, FORCE, RETALIATION,
OR INTERFERENCE IN CONNECTION WITH BAHAMIAN EFFORT COULD
HAVE DETRIMENTAL EFFECT ON U.S. ENFORCEMENT.
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